STATE OF MICHIGAN

COURT OF APPEALS

BERNICE PEARL and NANCY LUCKHURST,

Plaintiffs-Appellants,

v

MONTCALM COUNTY ROAD COMMISSION and CRYSTAL TOWNSHIP,

Defendants-Appellees.

UNPUBLISHED
January 14, 2000

No. 211469
Montcalm Circuit Court
LC No. 97-000607-CZ

Before: Bandstra, P.J., and Markman and Meter, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting summary disposition to defendants pursuant to MCR 2.116(C)(10). We affirm.

This case primarily involves judicial review of a decision made by a county road commission, and the standard of review is one that is "highly deferential, and precludes judicial intervention unless the disputed decision lacks any reasoned basis or evidentiary support." *Turner v Washtenaw Co Rd Comm*, 437 Mich 35, 37; 467 NW2d 4 (1991). We conclude that the trial court did not err in granting summary disposition to defendant road commission.

The parties agree that the statute at issue here is MCL 221.20; MSA 9.21, and that the controlling case for its interpretation is *Kentwood v Sommerdyke Estate*, 458 Mich 642; 581 NW2d 670 (1998). Plaintiffs assert that, in *Kentwood*, our Supreme Court held that a landowner may rebut the statutory presumption of a sixty-six foot roadway width by taking some action within ten years of the road being taken for public use. Plaintiffs claim that if the landowner fails to take such action to rebut the presumption, then the right-of-way becomes sixty-six feet, no matter what portion is actually used for highway purposes. Plaintiffs state that the road at issue was turned over to the control of the Montcalm County Road Commission in 1932 pursuant to the McNitt Act, 1931 PA 130. Plaintiffs conclude that this case should be remanded in order for them to show that their predecessor in title maintained control over the right-of-way during the ten years after 1932, thus rebutting the presumption of sixty-six foot width of the right-of-way. The trailer would thus be situated outside the right-of-way.

We disagree. Our Supreme Court in *Kentwood* clearly stated that the landowner must assert the right to property "within ten years after the *creation* of the road as a public road by use." *Kentwood*, *supra* at 662 (emphasis added). In other words, the year the highway came under the jurisdiction of the commission (1932) is irrelevant, and the ten-year period began to run when the road was first used as a road.

The road commission asserts, without argument from plaintiffs, that "[t]ypically," the highway-by-user roads in Montcalm County date back to the early or mid-1800s. Defendant contends that, because plaintiffs neither suggested nor offered any proof of use inconsistent with road use within the first ten years of the creation of the road at issue here, there is no basis for this Court to reverse and remand. We agree. Plaintiffs presented no facts to the trial court that would arguably create a genuine issue whether the right-of-way was less than sixty-six feet and that plaintiffs' trailer was situated within that sixty-six-foot right-of-way. The trial court correctly granted defendant road commission's motion for summary disposition.

Plaintiffs further claim that affidavits offered by defendant road commission were infirm because they did not provide expert opinions, that the trailer posed a hazard to motorists. The admissibility of a lay witness' opinion testimony is within the discretion of the trial court, *Sells v Monroe Co*, 158 Mich App 637, 647; 405 NW2d 387 (1987), and the decision whether to allow the testimony is made under MRE 104(a).

We conclude that the trial court did not abuse its discretion in considering the affidavits. The affidavits were proper under MRE 104(a) and MRE 701. Further, the affidavits' assertions regarding the hazard the trailer posed to motorists were not crucial to the motion for summary disposition. Once it was shown that the trailer was in the right of way, see discussion, *supra*, the road commission had the authority to order its removal regardless of whether it posed a hazard. MCL 247.171; MSA 9.251.

Plaintiffs also appeal the order granting summary disposition to defendant township. However, the township's position that plaintiffs have waived this argument has merit. Plaintiffs offer no authority in their brief as to the trial court's decision with respect to the township's motion. This Court will not search for authority to support a party's position. *Winiemko v Valenti*, 203 Mich App 411, 419; 513 NW2d 181 (1994).

Further, plaintiffs' argument is premised on facts that arose after the order granting summary disposition was entered. It must, therefore, be rejected by this Court. In addition, plaintiffs do not refute the township's statement that the permit expired on its face. Because plaintiffs' hookup permit from the township had expired, there was no township permit for the trial court to enforce. We affirm the trial court's decision to grant summary disposition to the township.

Finally, both defendants have filed motions requesting that sanctions be imposed, arguing that this is a vexatious appeal. Under MCR 7.216(C)(1)(a), an appeal is vexatious if it is taken "without any reasonable basis for belief that there was a meritorious issue to be determined . . . ." Having reviewed plaintiffs' arguments regarding the appeal against defendant road commission, we do not conclude that the appeal as to that defendant was without any such reasonable basis, and we deny defendant road

commission's motion. However, for the reasons we rejected plaintiffs' appeal against defendant township, we conclude that plaintiffs have failed to satisfy the "reasonable basis" standard of the rule, and we grant defendant township's motion for sanctions. We remand this matter to the trial court for a determination of the expenses incurred by defendant township defending this appeal, including reasonable attorneys fees, and for entry of an order directing plaintiffs to reimburse defendant township for those expenses. MCR 7.216(C)(2).

We affirm, but remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Patrick M. Meter

Judge Markman did not participate.